Butchers Union Local No. 506, United Food and Commercial Workers, AFL-CIO *and* Coors Distributing Company of San Jose *and* Adolph Coors Company

Service Employees International Union, Local No. 77, AFL-CIO *and* Coors Distributing Company of San Jose *and* Adolph Coors Company. Cases 32-CC-631, 32-CC-632, 32-CC-637, and 32-CC-638

29 December 1983

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND HUNTER

On 20 June 1983 Administrative Law Judge Jay R. Pollack issued the attached decision. The Respondents filed exceptions and a supporting brief, and the Charging Party and the General Counsel filed briefs in response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] recommendations, and conclusions and to adopt the recommended Order as modified

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondents, Butcher Union Local No. 506, United Food and Commercial Workers, AFL-CIO, and Service Employees International Union, Local No. 77, AFL-CIO, their officers, agents, and representatives, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1.

"1. Cease and desist from threatening, coercing, or restraining the Gilroy Garlic Festival Association where an object thereof is to force or require said person to cease using, selling, handling, transporting, or otherwise dealing in the products of Adolph Coors Company or to cease doing business with Coors Distributing Company of San Jose."

2. Substitute the following for paragraph 2(b).

"b. Sign and mail sufficient copies of the appropriate notice to the Regional Director for Region 32 for posting by Adolph Coors Company, Coors Distributing Company of San Jose, and the Gilroy Garlic Festival Association, if they are willing, at all places where notices to their employees are customarily posted."

3. Substitute the attached notices for those of the administrative law judge.

APPENDIX A

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT threaten, coerce, or restrain the Gilroy Garlic Festival Association where an object thereof is to force or require said person to cease using, selling, handling, transporting, or otherwise dealing in the products of Adolph Coors Company or to cease doing business with Coors Distributing Company of San Jose.

BUTCHERS UNION LOCAL NO. 506,
UNITED FOOD AND COMMERCIAL
WORKERS, AFL-CIO

APPENDIX B

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
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The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT threaten, coerce, or restrain the Gilroy Garlic Festival Association where an object thereof is to force or require said person to cease using, selling, handling, transporting, or otherwise dealing in the products of Adolph Coors Company

[1] The Respondents have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. Standard Dry Wall Products, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The judge erroneously states that the Respondents' letters were sent to the Gilroy Chamber of Commerce in addition to the Gilroy Garlic Festival Association, and accordingly improperly concludes that the Respondents also threatened the Gilroy Chamber of Commerce in violation of Sec. 8(b)(4)(B). The recommended Order is revised to correct these inaccuracies by deleting all references to the Chamber of Commerce in the Order.

In addition, the judge inadvertently quotes the letter Respondent SEIU sent to the Gilroy Garlic Festival Association as referring to "picket line" instead of "picket time." This inadvertency does not affect our decision.

or to cease doing business with Coors Distributing Company of San Jose.

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL NO. 77, AFL-CIO

DECISION

STATEMENT OF THE CASE

JAY R. POLLACK, Administrative Law Judge: I heard these consolidated cases in Oakland, California, on May 5, 1983. The cases arose as follows: Coors Distributing Company of San Jose (San Jose Coors) filed an unfair labor practice charge in Case 32-CC-631 on August 24, 1982,[1] and Adolph Coors Company (Coors) filed a charge in Case 32-CC-632 that same date against Butchers Union Local No. 506, United Food and Commercial Workers, AFL-CIO (Respondent Butchers). On August 25, San Jose Coors, in Case 32-CC-637, and Coors, in Case 32-CC-638, filed charges against Service Employees International Union, Local No. 77, AFL-CIO (Respondent SEIU). Thereafter on December 7, the Regional Director for Region 32 of the National Labor Relations Board (the Board) issued a consolidated complaint and notice of hearing against the Respondent.[2] The complaint alleges in substance that the Respondents engaged in certain violations of Section 8(b)(4) (ii)(B) of the National Labor Relations Act, as amended, 29 U.S.C. § 151, et seq., herein called the Act.

All parties were given full opportunity to appear, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs.[3]

Upon the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by the parties, I make the following

FINDINGS OF FACT AND CONCLUSIONS

I. JURISDICTION

Coors is a Colorado corporation with its principal place of business in Golden, Colorado, where it is engaged in the brewing, sale, and nonretail distribution of beer. San Jose Coors is a California corporation with its principal place of business in San Jose, California, where it is engaged in business as a nonretail beer distributor. San Jose Coors distributes beer brewed by Coors. However, the two companies are separately owned and operated. During the 12 months prior to issuance of the complaint, Coors sold and shipped from its facilities in Colorado to San Jose Coors in California goods valued in excess of $50,000. Accordingly, I find that Coors and San Jose Coors, at all times material herein, have each been a person and employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(1), (2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED

Respondent Butchers admits and I find it to be a labor organization within the meaning of Section 2(5) of the Act. Respondent SEIU denies that it is a labor organization. In *Service Employees SEIU Local 77 (Thrust IV)*, 264 NLRB 628 (1982), the Board found Respondent SEIU to be a labor organization within the meaning of Section 2(5) of the Act. Respondent SEIU's status as a labor organization is presumed to continue in existence. Accordingly, I find Respondent SEIU to be a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Facts*

The instant case arises out of a planned boycott by a National Coors Boycott Committee and various local labor organizations of Coors beer at the Gilroy Garlic Festival in July and August 1982. The Gilroy Garlic Festival Association, herein called the Association, a nonprofit corporation, runs the annual Garlic Festival in Gilroy, California, during the first weekend of August. The Garlic Festival provides entertainment, arts and crafts, and food and beverages for the general public. Numerous nonprofit organizations receive moneys from the proceeds of the Garlic Festival. The Gilroy Chamber of Commerce (the Chamber), a California nonprofit organization, works closely with the Association. Several persons sit on the board of directors of both organizations. The Association entered into a concessionaire agreement with the Chamber providing, inter alia, that the Chamber have the exclusive right to sell beer at the 1982 Garlic Festival.[4] The 1982 Garlic Festival was held on July 30 and 31 and August 1.

On May 18, at a regularly scheduled meeting of the Chamber's board of directors, the Chamber decided that any beer distributor who was a member of the Chamber, in good standing, would be eligible to sell beer at the Garlic Festival. Any local beer distributor could join the Chamber and thereby become eligible to sell beer at the Garlic Festival under the conditions established between the Chamber and the Association. San Jose Coors was a member of the Chamber and therefore eligible to sell beer at the Garlic Festival. Accordingly, San Jose Coors ordered an extra 600 kegs of beer from Coors in preparation for the Garlic Festival.[5]

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[1] Unless otherwise stated, all dates occurred in 1982.

[2] The original complaint included allegations against two other labor organizations, Bakery, Confectionery and Tobacco Workers International Union No. 24, AFL-CIO, CLC and Building and Construction Trades Council of San Mateo County. After the opening of the hearing, the General Counsel moved to sever the cases against the Bakery Workers and Building Trades Council and to remand those cases to the Regional Director for purposes of settlement. The motion was granted and the hearing proceeded with respect to allegations against the two remaining Respondents.

[3] The Respondents filed timely answers to the complaint, but did not appear at hearing. The Respondents' post-trial brief was filed 1 day late, but was considered as if timely filed.

[4] The Chamber earns approximately half of its annual income from its participation in the Garlic Festival. The Association and the Chamber are persons engaged in commerce and in an industry affecting commerce within the broad interpretation given Sec. 2(1), (6), and (7) of the Act.

[5] Earlier, at a meeting on April 29, the Association's board of directors voted not to take a position on the sale of Coors beer at the Garlic Festival but rather to leave that decision to the Chamber.

During the first week of July, the Chamber received a letter from the Santa Clara, San Benito, and Santa Cruz Counties Building and Construction Trades Council informing the Chamber, inter alia, that "the Coors boycott is attempting to organize a boycott of the Garlic Festival among labor, religious, environmental, and ethnic organizations, and is planning an event for publicity purposes sometime during the course of the Garlic Festival."[6] Thereafter, in early July, the Chambers' excutive vice president and four of its board members met with James Hirsch, a business representative of the Santa Clara Trades Council and the author of the letter described above. Hirsch told the Chamber's representatives that the boycott of the Coors organization had targeted the Garlic Festival as the first demonstration or picket of the summer. Hirsch asked the Chamber not to sell Coors beer. The Chamber's representatives asked what kind of demonstration or picket was planned. Hirsch answered that he did not know and that he could only speak for his union.

On July 7, the Association received from Respondent SEIU a letter indicating support for "the Boycott of Coor's beer" which provided, inter alia:

> We are on record as supporting the Boycott of Coors beer because of their violations of personal rights. The Coors Boycott Committee has asked us to support a demonstration at the Garlic Festival and to publicize this to our members.
>
> Service Employees' Union Local 77 will notify our 3,000 members of the proposed picket line at the Garlic Festival. We do not wish to disrupt the Garlic Festival, however, as long as Coors beer is being sold we will support the efforts of the Boycott Committee.

On July 7, the Association's board of directors met to discuss a letter received from Respondent SEIU, and similar letters received from Teamsters Joint Council No. 7 and the Santa Clara Trades Council concerning the boycott of Coors beer. The Association decided to request the Chamber to reconsider its decision to permit the sale of Coors beer at the Garlic Festival. The Association's decision was based on the uncertainty of what action the Union had planned to take at the Garlic Festival. On July 8, the Association sent a letter to the Chamber requesting that the Chamber reconsider its decision to permit the sale of Coors beer at the Garlic Festival. On July 9, the Chamber's board of directors decided not to permit San Jose Coors to sell Coors beer at the Garlic Festival. According to a press release of the Chamber's president, the decision was based on the letters received from three unions (Respondent SEIU, Teamsters Joint Council No. 7, and the Santa Clara Trades Council) advising of a planned boycott, if Coors beer was sold, "with *unpredictable* circumstances . . . which could have had an adverse impact on the Festival on the whole." Shortly thereafter, the Chamber notified San Jose Coors that "due to intimidation from the unions" the Chamber had decided not to permit the sale of Coors beer at the 1982 Garlic Festival.

On July 9, the Association received a letter from Respondent Butchers which provided:

> We understand that you are planning to sell Coors beer at the Garlic Festival this year. Due to our longstanding support of the Coors Boycott, we will support the anti-Coors demonstration being planned.
>
> The Butchers' Union Local 506, representing 2500 members in Santa Clara County, is sending a letter to our membership informing them that Coors beer is being sold at this year's Garlic Festival and our plans to join the picket line on July 31st in Gilroy. We also will notify the Bay Area Locals regarding the picket line.

The Association received this letter from Respondent Butchers after the Chamber had already determined not to permit the sale of Coors beer at the Garlic Festival. The Garlic Festival was held as scheduled on July 30 and 31 and August 1. Coors beer was not sold and there was no boycott or picket at the Festival.

B. *Contentions of the Parties*

The General Counsel contends that the Respondent unlawfully threatened the Association and the Chamber with *an object* of forcing those persons to cease dealing in Coors beer and to cease doing business with Coors and San Jose Coors. The General Counsel contends that, even assuming arguendo the Respondents intended a lawful consumer boycott and picket of the product, Coors beer, the letters sent to the Association and the Chamber did not clearly indicate that the picketing and boycott would be limited to Coors beer and not be extended to the Garlic Festival in general.

The Respondents contend that they did no more than notify the Association of the intended boycott of Coors beer and that they did not threaten to picket the Garlic Festival, the Association, or the Chamber.

C. *Analysis and Conclusions*

As stated above the complaint alleges, in substance, that the Respondents violated Section 8(b)(4)(ii)(B) of the Act[7] by seeking through allegedly unlawful statements to force or require the Association and the Chamber to cease selling Coors beer and to cease doing business with Coors and San Jose Coors.

In the *Tree Fruits* case,[8] the Supreme Court held that a union could picket a store to persuade retail customers

[6] The General Counsel concedes that there is no factual or legal basis to impute the statements of the Santa Clara Trades Council to either of Respondents herein.

[7] Sec. 8(b)(4)(ii)(B) provides in relevant part:

> It shall be an unfair labor practice for a labor organization or its agents . . . to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where . . . an object thereof is . . forcing or requiring any person to cease using, selling, handling, transporting or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person . . . . *Provided*, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing.

[8] *NLRB v. Fruit & Vegetable Packers Local 760 (Tree Fruits Labor Relations Committee)*, 377 U.S. 58 (1964).

not to purchase in that store a product manufactured by an employer with which the union had a dispute. The Court held that Congress did not plan to proscribe all peaceful consumer picketing at secondary sites. The legislative history showed that Congress narrowly focused on an "isolated evil" and proscribed peaceful consumer picketing at secondary sites only when its use was to persuade the customers of the secondary employer to cease trading with him in order to force him to cease trading with, or to put pressure upon, the primary employer. The Court stated:

> This narrow focus reflects the difference between such conduct and peaceful picketing at the secondary site directed only at the struck product. In the latter case, the union's appeal to the public is confined to its dispute with the primary employer, since the public is not asked to withhold its patronage from the secondary employer, but only to boycott the primary employer's goods. On the other hand, a union appeal to the public at the secondary site not to trade at all with the secondary employer goes beyond the goods of the primary employer, and seeks the public's assistance in forcing the secondary employer to cooperate with the union in its primary dispute. [At 63–64.]

In the *Servette*[9] case, issued the same day as *Tree Fruits*, the Supreme Court held that a mere request addressed to a secondary employer asking that it cease doing business with a struck primary employer is *not itself* violative of Section 8(b)(4)(ii)(B) of the Act. In reaching this decision, the Court drew the distinction between a mere request for voluntary cooperation on the part of the secondary employer and conduct which by its nature has the effect of coercing a secondary employer into acquiescence. The Court further held that warnings that handbills would be distributed in front of a secondary employer's premises were not prohibited threats within the meaning of Section 8(b)(4)(ii)(B). The Court reasoned that the statutory protection for the distribution of handbills would be undermined if a threat to engage in such lawful conduct were not itself lawful.

In the instant case, Respondent SEIU warned the Association of its intent "to support a demonstration of the Garlic Festival and to publicize this to our members." Respondent SEIU further stated that it would notify its members of the proposed picket line. While indicating that it did not want to disrupt the Garlic Festival, Respondent SEIU indicated that it would support the efforts of the Boycott Committee. Similarly, Respondent Butchers indicated support for the anti-Coors demonstration and its "plan to join the picket line on July 31st in Gilroy." The Respondents clearly did more than merely request that the Association and the Chamber not permit the sale of Coors beer but rather they threatened a boycott and the picket line. Under these circumstances, the issue is whether the Respondents threatened to engage in lawful consumer boycott activity or whether the Respondents threatened to picket the Garlic Festival, a neutral in their dispute with Coors.

[9] *NLRB v Servette, Inc.*, 377 U.S. 46 (1964).

In *Teamsters Local 886 (Stephens Co.)*, 133 NLRB 1393 (1961), the Board held the following statement of the respondent union to be an unqualified threat to picket, and, therefore, violative of Section 8(a)(4)(ii)(B) of the Act:

> It now becomes necessary for us to inform all union members and the general public of the facts in this matter. This we intend to do by use of pickets at the place of business of the customers of the The Stephens Company.

In the same case the Board (133 NLRB at 1394) held that the respondent union did not further violate the Act by stating in a letter its intent to picket because that letter contained the following qualification:

> In the event that any picketing of Stephens takes place in the vicinity of your place of business, be assured that it will be conducted in strict conformity with the standards for primary ambulatory picketing as enunciated by the NLRB . . . .

In cases dealing with threats to picket at a secondary employer's business, the burden is on the union to restrict its statement to the giving of notice of prospective lawful activity against the primary. Unqualified or ambiguous threats will be construed against the union as threats to the secondary's business relationship with the primary. See, e.g., *Sheet Metal Workers Local 418 (Young Plumbing & Supply)*, 227 NLRB 300, 311–312 (1976); *Carpenters Local 639 (American Modulars Corp.)*, 203 NLRB 1112 (1973); *Teamsters Local 147 (V. G. Scalf)*, 172 NLRB 1217 (1968); *Teamsters Local 83 (Marshall & Haas)*, 133 NLRB 1144, 1146 (1961). In cases involving consumer boycotts, the burden is on the union to "clearly identify that product and the person with the whom the Union has a dispute so that the customer will not have to assume the risk of deciding what course of action is desired of him." *Independent Routemen Assn. (Urban Distributors)*, 206 NLRB 245, 248 (1973); *Soft Drink Workers Local 812 (Monarch Long Beach Corp.)*, 243 NLRB 801 (1979), enfd. 657 F.2d 1252 (D.C. Cir. 1980).

In *Meat & Allied Food Workers Local 248 (Milwaukee Independent Meat Packers)*, 230 NLRB 189 (1977), the respondent union failed to give assurance that its threatened picketing would be conducted in conformity with legally permissible standards. The Board found that the threat to picket without such assurances violated Section 8(b)(4)(ii)(B). See also *San Francisco Labor Council (ITO Packing Co.)*, 191 NLRB 261, 266 (1971) (warning of picketing went beyond a mere request for cooperation and gave no assurance that the picketing would be limited to appeals to consumers).

Based on the applicable law above, I find that the Respondents violated the Act by not restricting their statements concerning the intended boycott and picket to a boycott or picket of Coors beer. The Respondents' statements were broad enough to imply a boycott or picket of the Festival, a neutral in the dispute with Coors. The burden was on the Respondents to clearly indicate a lawful product boycott and picket, if that is what the Respondents intended. The Respondents cannot shift the

burden to neutral persons to interpret their statements so as to give the statements lawful meaning. Thus, without assurance that the boycott and picketing would be limited to a consumer boycott of Coors beer, the Respondents' letters were violative of Section 8(b)(4)(ii)(B) of the Act.

CONCLUSIONS OF LAW

1. Coors Distributing Company of San Jose and Adolph Coors Company are employers and persons engaged in commerce and in an industry affecting commerce within the meaning of Section 2(1), (2), (6), and (7) and Section 8(b)(4)(ii)(B) of the Act.

2. The Gilroy Garlic Festival Association and the Gilroy Chamber of commerce are persons engaged in commerce and in an indusry affecting commerce within the meaning of Section 2(1), (6), and (7) and Section 8(b)(4)(ii)(B) of the Act.

3. The Respondents, Butchers Union Local No. 506, United Food and Commercial Workers, AFL-CIO, and Service Employees International Union, Local No. 77, AFL-CIO, are labor organizations within the meaning of Section 2(5) and Section 8(b)(4)(ii)(B) of the Act.

4. By threatening, coercing, and restraining the Association and the Chamber, as found herein, with an object of (a) forcing or requiring the Association and the Chamber to cease using, selling, handling, transporting, or otherwise dealing in the product of Coors, and (b) forcing or requiring the Association and the Chamber to cease doing business with San Jose Coors, the Respondents have engaged in unfair labor practices proscribed by Section 8(b)(4)(ii)(B) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondents have engaged in unfair labor practices proscribed by Section 8(b)(4)(ii)(B) of the Act, I shall recommend that they cease and desist therefrom and that they take certain affirmative action designed to remedy their unfair labor practices and to effectuate the policies of the Act.

Upon the basis of the foregoing findings of fact, conclusions of law, and the entire record in this case, and pursuant to Section 10(c) of the Act, I issue the following recommended

ORDER[10]

The Respondent, Butchers Union Local No. 506, United Food and Commercial Workers, AFL-CIO, and Service Employees International Union, Local No. 77, AFL-CIO, their officers, agents, and representatives, shall

1. Cease and desist from

Threatening, coercing, or restraining the Gilroy Garlic Festival Association or the Gilroy Chamber of Commerce, where an object thereof is to force or require said persons to cease using, selling, handling, transporting, or otherwise dealing in the products of Adolph Coors Company or to cease doing business with Coors Distributing Company of San Jose.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act.

(a) Post at each Respondent's business office, meeting halls, and all other places where notices to members are customarily posted copies of the appropriate notice marked "Appendix A" (Respondent Butchers) and "Appendix B" (Respondent SEIU).[11] Copies of the appropriate notice, on forms provided by the Regional Director for Region 32, after being signed by the authorized representative of the respective Respondent, shall be posted by each Respondent, immediately upon receipt and maintained for 60 consecutive days thereafter in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by each Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Sign and mail sufficient copies of the appropriate notice to the Regional Director for Region 32 for posting by Adolph Coors Company, Coors Distributing Company of San Jose, the Gilroy Garlic Festival Association, and the Gilroy Chamber of Commerce, if they are willing, at all places where notices to their employees are customarily posted.

(c) Notify the Regional Director for Region 32 in writing within 20 days from the date of this Order what steps each Respondent has taken to comply.

[10] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[11] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."